



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA No. 3148 of 2017

Pappa

...Appellant/Petitioner

Vs

1.G.Saravanan

2.K.Sathiyarayanan

3.Iffco-Tokio General Insurance Co Limited.,
Tulsi Chambers, 3rd Floor, 195, T.V.Swamy Road (West)
R.S.Puram, Coimbatore.

4.T.Sivaraj

5.G.Gurusave

6.Reliance General Insurance Co Limited.,
141/71, Tiruvenkatasamy Road (West),
R.S.Puram, Coimbatore

...Respondents/Respondents

(Notice to R1 to R5 may be dispensed with for the time being for which separate petition is filed herewith)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the M.V. Act, 1988 to set aside the order made in M.C.O.P.No. 172 of 2009 on the file of the Motor Accident Claims Tribunal cum Fast Track Court No.4, Bhavani, Erode District, dated 12.03.2012.

For Appellant : Mr. C. Kulanthaivel

For RR 1 to 5 : NDW

For 6th Respondent : Mr. S.Arun Kumar



J U D G M E N T

The appellant was the claimant in M.C.O.P.No. 172 of 2009 which was pending on the file of Motor Accident Claims Tribunal / Fast Track Court No.4, Bhavani, Erode District.

2. By Judgment dated 12.03.2012, the Claim Petition was dismissed, necessitating filing of the present appeal. The claim petition had been filed under Section 166 of the Motor Vehicles Act, 1988. The Tribunal, during the course of trial, had framed as the first issue to be examined, whether the accident occurred due to the rash and negligent driving of the vehicle concerned.

3. The brief facts necessitating the filing of the Claim Petition are that the claimant, on 25.01.2009 at around 11 a.m., was travelling in an Auto bearing Registration No. TN-34/F-2619 from Erode to Tiruchengode near Alamedu Membalam Thatha Kolipannai towards Erode. At that time, an Innova Car bearing Registration No. TN-24/U-5577 which was said to be driven, according to the claimant, in a rash and negligent manner, came in the opposite direction and hit against the Auto, owing to which, the claimant suffered grievous injuries. This necessitated the claimant to be admitted as an inpatient for practically two months at Dr.Alagiri Hospital at Pallipalayam. The claimant had suffered both side hip bone fracture, left thigh bone fracture and Lacerated wound over the left foot and right thigh. Claiming compensation for the injuries suffered, the claimant had preferred the aforementioned M.C.O.P.No. 172 of 2009.

4. The trial had proceeded in a slow manner since objections were raised placing reliance on the records produced namely, the FIR which was registered and the final report filed pursuant to the investigation of the FIR and a doubt was raised which was affirmed by the Tribunal that the driver of the vehicle was not the person who, was finally charge sheeted by the police. Claiming that the petitioner had therefore not placed correct facts before the Court and that the Innova Car bearing Registration No. TN-24/U-5577 was not the vehicle involved in the accident, the Tribunal proceeded to dismiss the claim petition. The Tribunal did not proceed further to determine the quantum of compensation to be awarded.

5. Questioning that particular award, the claimant had filed the present Appeal.

6. My attention had been drawn to the fact that in the very same accident, another injured person, namely, Kunjammal,



who was aged about 40 years, had also filed M.C.O.P.No. 386 of 2010, which also came up before the MACT/Additional District Court at Bhavani, which is the Tribunal which also adjudicated the claim petition of the appellant herein.

WEB COPY

7. In that case, the Tribunal came to a conclusion that the aforementioned TATA Innova Car caused the accident and was driven in a rash and negligent manner leading to the accident and affirmed that particular point in favour of the claimant and proceeded to grant compensation. This finding naturally, works to the advantage of the appellant herein and it would highly inappropriate if the appellant was to be non suited on the ground of not establishing the identity of the driver of the offending vehicle when another claim petition preferred by another injured in the same accident, the identity of the driver of the vehicle was affirmed and compensation was granted.

8. I would therefore set aside the order of the Motor Accident Claims Tribunal on that particular issue with respect to the identity of the vehicle or the driver. It had been very clearly pointed out in the discussion in M.C.O.P.No. 386 of 2010 that the FIR and also the report of the Motor Vehicle Inspectors and the final report pointed out to the fact that the Innova Car was alone responsible for the accident. It was also pointed out that the Sub Inspector of Police, Pallipalayam Police Station who adduced evidence as PW-2 had stated that the Investigating Officer had changed the name of the Auto driver from Sekar to Shivaraj. In view of these facts, it would only be appropriate that the liability of the insurer of the Innova vehicle is fixed and determined.

9. Heard Mr. C.Kulanthaivel, learned counsel for the appellant and Mr.S.Arun Kumar learned counsel for the insurer/6th respondent/Reliance General Insurance Co Ltd.

10. The facts reveal that while the appellant was travelling in an auto, the Innova A/c Vehicle, driven in a rash manner had dashed against the auto. I would fix the liability for payment of compensation to the 6th respondent, the insurer of the said offending vehicle.

11. Let me therefore fasten liability on the sixth respondent insurer/ insurer of the innova vehicle bearing Registration No. TN-24/U-5577.

12. The compensation to be granted must then be examined. The Insurance Company had not let in any contra evidence denying liability or alleging contributory negligence on the part of the other vehicle.



13. While determining compensation, the fact to be considered the age of the petitioner, which was determined as 50 years. She was working as an agricultural coolie. The nature of injuries have been set out above and it is seen that those injuries would make it impossible for her to further continue to as an agricultural coolie effectively putting an end to her known avocation. A disability certificate is available and the Doctor had assessed the disability at 36%. Let me go with that opinion while determining the disability.

14. It is also seen that she had been in hospital for 38 days from 25.01.2009 to 04.03.2009. Naturally the injuries should have been quite extensive. The monthly income is determined at Rs.6,500/- per month and if it is taken into account and applied with multiplier '13', the income per year would be $6,500 \times 12 \times 13 \times 35\% = 3,54,900/-$.

15. The bills for medical expenses have been produced. Let me go with the documents which had been produced before the Court. They are for a sum of Rs.58,811.79 which is rounded up to Rs.58,812/-. With respect to transport expenses, I would grant a sum of Rs.5,000/-. With respect to the damages to clothes and apparels, I would grant a sum of Rs.2,000/-. With respect to additional food or nutrients to be supplied during the course of treatment and also subsequent to the treatment, I would grant a sum of Rs.3,000/-. For compensation for pain and suffering, I would grant a sum of Rs.10,000/-. The total compensation comes to Rs.4,33,712/-.

16. The compensation amount is therefore granted as follows:-

1. loss of income	:	Rs. 3,54,900
2. Pain and suffering	:	Rs. 10,000/-
3. Food and Nutrients	:	Rs. 3,000/-
4. Transport to Hospital	:	Rs. 5,000/-
5. Damages to clothes	:	Rs. 2,000/-
7. Medical Expenses	:	Rs. 58,812/-

Rs. 4,33,712/-

17. The total compensation granted is Rs.4,33,712/-. In fine, the Appeal is allowed. No costs.

18. The sixth respondent is directed to deposit the compensation amount less the amount already deposited, if any, with interest at the rate of 7.5% per annum after deducting the interest portion for 1877 days from the date of filing of the



petition till date of deposit within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn. No order as to costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

vsg

To

1. Fast Track Court No.4,
Motor Accident Claims Tribunal
Bhavani, Erode District
2. The Section Officer,
VR Section,
Madras High Court, Chennai.

+1cc to Mr.C.Kulanthaivel, Advocate SR. No.13549

CMA No. 3148 of 2017

PM (CO)

PR (07/04/2022)